

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

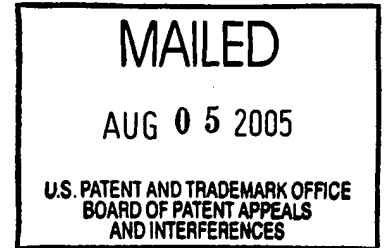
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD HUGH MILLER
and IRVING TOIVO SALMEEN

Appeal No. 2005-1307
Application No. 09/683,602

ON BRIEF



Before KRASS, JERRY SMITH, and NAPPI, Administrative Patent Judges.
JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-23, which constitute all the claims in the application.

The disclosed invention pertains to a method and apparatus for operating a pre-crash sensing system for a first vehicle proximate a second vehicle.

Representative claim 1 is reproduced as follows:

1. A method for operating a pre-crash sensing system for a first vehicle proximate a second vehicle a counter-measure system comprising:
generating an object detection signal over a field of view from a first vehicle;
receiving the object detection signal at the second vehicle when positioned within the field of view;

generating a response signal in response to said object detection signal, said response signal including a key;
establishing a communication link between said first vehicle and said second vehicle using said key;
communicating a first vehicle data signal to the second vehicle using said key; and
communicating a second vehicle data signal to the first vehicle using said key.

The examiner relies on the following reference:

Lemelson et al. (Lemelson) 5,983,161 Nov. 9, 1999

Claims 1-23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the disclosure of Lemelson.

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of anticipation relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' argument set forth in the briefs along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the disclosure of Lemelson does not fully meet the invention as set forth in claims 1-23. Accordingly, we reverse.

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner has indicated how he finds the claimed invention to be fully met by the disclosure of Lemelson [answer, pages 3-8]. With respect to independent claim 1, appellants argue that Lemelson fails to teach or suggest the use of a key as claimed. Appellants note that the use of a key means that only the vehicles that have the key can participate in the communication. Appellants argue that the examiner's reliance on code division multiple access (CDMA) communications in Lemelson is misplaced because CDMA is a general communication format and

not a key. Appellants assert that the context of the use of the word key is clear from the specification and goes beyond the interpretation provided by the examiner [brief, pages 3-5].

The examiner responds that CDMA, which is disclosed by Lemelson, is a coded or encrypted signal and is also known as a signal carrying a key intended to be received and processed only by receivers which can interpret the key or coded signal. The examiner also responds that CDMA has a communication key based on dictionary definitions of key and CDMA [answer, pages 9-11].

Appellants respond that the examiner has confused a key with a communication protocol such as CDMA. Appellants assert that the key is a special code that must be present in the communication word and both of the communicating signals hold the key. Appellants reiterate that CDMA signals do not have a key that is exchanged between the various devices. Appellants also argue that even if the examiner's interpretation of a key is correct, there is still no teaching in Lemelson for exchanging the communication key [reply brief, pages 2-3].

We will not sustain the examiner's rejection of independent claim 1 for essentially the reason argued by appellants in the briefs. We do not agree with the examiner's position that all

CDMA communications include a key within the meaning of claim 1. The "key" as recited in claim 1 and as described in appellants' specification is intended to exclude some of the vehicles which can normally communicate with each other and to limit the communications to a selected subset of the vehicles, that is, only those having the key. We also agree with appellants that there is no exchange of a key in Lemelson or the establishment of a communication link in Lemelson based on a key. The vehicles in Lemelson would always be in communication as long as they are properly tuned to the CDMA frequency. The link is always present whether or not a vehicle chooses to "listen." Since the rejection is based on anticipation, the examiner's findings in support of the rejection are deficient. Whether the use of a key in the Lemelson system would have been obvious to the artisan within the meaning of 35 U.S.C. § 103 is an issue which is not before us.

With respect to independent claims 14 and 21, appellants argue that Lemelson fails to disclose the claimed communication key or the claimed threat registry [brief, pages 6-8]. Since Lemelson fails to disclose the claimed communication key for reasons discussed above, we also do not sustain the anticipation rejection of independent claims 14 and 21.

In summary, we have not sustained the examiner's rejection with respect to any of the independent claims on appeal. Therefore, we also do not sustain the examiner's rejection with respect to any of the dependent claims as well. Accordingly, the decision of the examiner rejecting claims 1-23 is reversed.

REVERSED



ERROL A. KRASS)
Administrative Patent Judge)



JERRY SMITH)
Administrative Patent Judge)



ROBERT E. NAPPI)
Administrative Patent Judge)

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